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| 10/529,379 | 03/28/2005 | Riccardo Palumbo | D-43568-01 | 4566 |

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| EXAMINER |
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KIM, SANG K

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| ART UNIT | PAPER NUMBER |
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3654

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11/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/529,379

Applicant(s)

PALUMBO, RICCARDO

Examiner

SANG KIM

Art Unit

3654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, line 2, the term "a shaft of a bag loader" is indefinite and vague since the applicant has traversed the objection from the Previous Office Action and refuse to correct the matter. Examiner is not sure if these elements are same from the claim 1 (i.e., already recited in the section b of claim 1) or considered to be a different shaft of a bag loader.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill, U.S. Patent No. 4796412, in view of GB, 2064477A.

Regarding claims 1, 3, 6, 7 and 10, O'Neill '412 discloses a method and an apparatus for taking up a succession of imbricated packaging bags 2a-c carried by a

pair of carrier tapes 3, 4, two carrier tape winding spools 8, 9 positioned parallel with one another; and a differential gear unit 13 with a bevel gear 14 positioned outside the spools, said differential gear unit being adapted to removably connectable (i.e., gears can be disassembled by simply removing bolts and fasteners without the use of tools and using hands) to a shaft (shaft of 15) of a bag loader (no reference number assigned, near 15) whereby two carrier tapes can be wound up on said spools with equal tension, see the drawing, and column 3, lines 13-20.

GB '477 shows an apparatus for taking bags carried by a pair of carrier tapes 3, 5, two carrier tape winding spools 11, 13 positioned coaxially with one another; and a different gear unit 17 positioned in-between said spools, said differential gear unit provide each spool to wind the tapes with equal tension, see figure 2, and page 1, lines 35-43.

O' Neill '412 discloses the claimed invention except for positioning two spools coaxially and placing the differential gear in between the spools. However, O' Neill '412 recognizes that the spools can be arranged coaxially with the differential gear in-between the spools, see column 1, lines 36-49.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of O'Neill '412 by positioning the spools coaxially and placing the differential system in-between the spools as taught by GB '477, to show that there are many alternative arrangements for placing or rearranging the parts to provide equal tension to the tapes. Furthermore, it has been held that

rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Regarding claim 2, as stated above, O' Neill '412 shows each spool having a recess (no reference number assigned, aperture of 8, 9) where the differential gear unit 13 (using 11 and 12) is positioned in the recesses, see the drawing.

Regarding claims 4-5, as stated above, O' Neill '412 shows the differential gear unit 13 comprises many gears, each gear comprising a core and meshing with each other bevel gear with the core of 14 comprises a mating hole (aperture for shaft of 15) inserted into 14 mating with the shaft 15 of the bag holder, see the drawing.

Response to Arguments

Claims 1, 3-4, 6-7 and 10 have been amended.

Claims 8-9 are canceled.

Applicant's arguments filed on 10/4/07 have been fully considered but they are not persuasive with respect to claims 1-7 and 10.

Applicant argues that GB '477 teaches a differential gear that is permanently attached to the machine. Also, applicant argues that O'Neill '412 teaches the spools can be removably connected to the bag loader, but not the differential drive mechanism. Applicant believes that the references above are different from applicant's claimed invention, which is directed to a differential gear unit positioned between two carrier tape winding spools, the differential gear unit adapted to be, in use, removably connectable to a shaft of a bag loader.

As stated above, the concept of removably connectable to a shaft of a bag loader is taught by disassembling the gears by removing the bolts and fasteners without the use of tools and using hands. Furthermore, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138.

Applicant argues that GB '477 and O'Neil '412 teach two separate shafts of the bag loader. Applicant claimed invention uses only one component to be fitted onto a single shaft of the bag loader.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to convert two shafts into one component. Since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Howard V. Detroit Stove Works, 150 U.S. 164 (1993).

Applicant argues the Office Action does not identify applicant claimed device, especially claim 2, wherein said differential gear unit is positioned in said recesses,.

As stated above, O' Neill '412 shows each spool having a recess (no reference number assigned, aperture of 8, 9) where the differential gear unit 13 (using 11 and 12) is positioned in the recesses, see the drawing.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SANG KIM whose telephone number is 571-272-6947. The examiner can normally be reached Monday through Thursday from 9:00 A.M. to 5:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo, can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should


Application/Control Number:
10/529,379
Art Unit: 3654

Page 7

you have questions on access to the Private PAIR system, contact the Electronic
Business Center (EBC) at 866-217-9197 (toll-free).

SK

11/19/07


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600